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[Proposed] Co-Lead Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JIM PORTER, derivatively on behalf of
TWITTER, INC.,

Plaintiff,

v.

RICHARD COSTOLO, ANTHONY NOTO,
JACK DORSEY, PETER FENTON,
MARTHA LANE FOX, HUGH F.
JOHNSTON, OMID KORDESTANI, DEBRA
L. LEE, DAVID ROSENBLATT, MARJORIE
SCARDINO, BRET TAYLOR, and EVAN
WILLIAMS,

Defendants,

-and-

TWITTER, INC., a Delaware corporation,

Nominal Defendant.

Case No.: 3:16-cv-06136-JST

**STIPULATION AND [PROPOSED]
ORDER CONSOLIDATING
DERIVATIVE ACTIONS AND
APPOINTING CO-LEAD COUNSEL
FOR PLAINTIFFS**

Judge: Honorable Jon S. Tigar
Courtroom: 9
Date Action Filed: October 24, 2016

[Caption continued on next page.]

1 ERNESTO ESPINOZA, Derivatively on
2 Behalf of TWITTER, INC.,

3 Plaintiff,

4 v.

5 JACK DORSEY, ANTHONY NOTO,
6 PETER FENTON, DAVID ROSENBLATT,
7 MARJORIE SCARDINO, EVAN
8 WILLIAMS, RICHARD COSTOLO,
9 PETER CHERNIN, and PETER CURRIE,

10 Defendants,

11 -and-

12 TWITTER, INC., a Delaware corporation,

13 Nominal Defendant.

Case No.: 3:16-cv-06457-WHO

Judge: Honorable William H. Orrick

Courtroom: 12

Date Action Filed: November 4, 2016

14 FRANCIS FLEMING, derivatively on behalf
15 of TWITTER, INC.,

16 Plaintiff,

17 v.

18 RICHARD COSTOLO, ANTHONY NOTO,
19 JACK DORSEY, PETER FENTON, DAVID
20 ROSENBLATT, MARJORIE SCARDINO,
21 and EVAN WILLIAMS,

22 Defendants,

23 -and-

24 TWITTER, INC., a Delaware corporation,

25 Nominal Defendant.

Case No.: 4:16-cv-06492-YGR

Judge: Honorable Yvonne Gonzalez Rogers

Courtroom: 1

Date Action Filed: November 8, 2016

1 **WHEREAS**, there are presently three related stockholder derivative actions currently
 2 pending in this District against the Individual Defendants,¹ who are certain current and former
 3 directors and officers of nominal defendant Twitter, Inc. (“Twitter”) (Twitter, together with the
 4 Individual Defendants, being collectively referred to herein as “Defendants”): *Porter v. Costolo et*
 5 *al.*, Case No. 3:16-cv-06136-JST; *Espinoza v. Dorsey, et al.*, Case No. 3:16-cv-06457-WHO; and
 6 *Fleming v. Costolo, et al.*, Case No. 4:16-cv-06492-YGR (together, the “Related Derivative
 7 Actions”);²

8 **WHEREAS**, under Fed. R. Civ. P. 42(a), when actions involve “a common question of
 9 law or fact,” the Court may “(1) join for hearing or trial any or all matters at issue in the actions;
 10 (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay”;

11 **WHEREAS**, the Related Derivative Actions challenge similar alleged misconduct by
 12 Twitter’s directors and executive officers and involve common questions of law and fact.
 13 Accordingly, plaintiffs respectfully submit that consolidation of the Related Derivative Actions is
 14 appropriate;

15 **WHEREAS**, to avoid potentially duplicative actions and to prevent any waste of the
 16 Court’s resources, plaintiffs propose that the Related Derivative Actions should be related and
 17 consolidated for all purposes, including pre-trial proceedings and trial, into a single consolidated
 18 action (hereinafter referred to as the “Consolidated Derivative Action”);

19
 20
 21 ¹ The “Individual Defendants” include Richard Costolo, Anthony Noto, Jack Dorsey, Peter
 22 Fenton, David Rosenblatt, Marjorie Scardino, Evan Williams, Peter Chernin, and Peter Currie.

23 ² Additionally, two putative class actions alleging violations of the federal securities laws were
 24 filed against Twitter and certain Twitter officers and are pending in this district: *Shenwick v.*
 25 *Twitter, Inc., et al.*, Case No. 3:16-cv-05314-JST, and *Degenhardt v. Twitter, Inc., et al.*, Case No.
 26 3:16-cv-05439-JST (collectively, “the Securities Class Actions”). The Related Derivative
 27 Actions assert different claims for liability but involve some of the same parties and factual
 28 allegations as the Securities Class Actions. For clarity, the Related Derivative Actions and the
 Securities Class Actions should not be consolidated with one another. While the Related
 Derivative Actions and the Securities Class Actions should be related under Civil Local Rule 3-
 12, they are not suitable for consolidation because, among other reasons, the Securities Class
 Actions allege violations of the federal securities laws *against* Twitter, whereas the Related
 Derivative Actions bring claims *on behalf of* Twitter.

1 **WHEREAS**, Johnson & Weaver, LLP, and Robbins Arroyo LLP seek to be designated as
 2 Co-Lead Counsel in the Consolidated Derivative Action, and Defendants take no position with
 3 respect to such designation or with respect to paragraphs 7 and 8 below; and

4 **WHEREFORE**, the parties, through their undersigned counsel, hereby agree, stipulate,
 5 and respectfully request that the Court enter an Order as follows:

6 1. Defendants hereby acknowledge service of the summonses and complaints in the
 7 Related Derivative Actions. Aside from defenses and objections related to the absence of a
 8 summons or of service, Defendants expressly reserve all defenses and objections to the
 9 complaints filed in the Related Derivative Actions and any complaints filed in the Consolidated
 10 Derivative Action, including but not limited to defenses based on lack of personal jurisdiction and
 11 improper venue.

12 2. Defendants need not answer, move or otherwise respond to any of the complaints
 13 currently filed in the Related Derivative Actions.

14 3. The following actions shall be consolidated for all purposes, including pre-trial
 15 proceedings and trial, into one action (the "Consolidated Derivative Action"):

<u>Case Name</u>	<u>Case No.</u>	<u>Filing Date</u>
16 <i>Porter v. Costolo, et al.</i>	3:16-cv-06136-JST	October 24, 2016
17 <i>Espinoza v. Dorsey, et al,</i>	3:16-cv-06457-WHO	November 4, 2016
18 <i>Fleming v. Costolo, et al.</i>	4:16-cv-06492-YGR	November 8, 2016

19
 20 4. Every pleading filed in the Consolidated Derivative Action, or in any separate
 21 action included herein, must bear the following caption:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE TWITTER, INC. SHAREHOLDER
DERIVATIVE LITIGATION,

This Document Relates To:

ALL ACTIONS.

Lead Case No.: 3:16-cv-06136-JST

(Consolidated with Nos. 3:16-cv-06457-WHO
and 4:16-cv-06492-YGR)

(Derivative Action)

Judge: Honorable Jon S. Tigar

Courtroom: 9

Date Action Filed: October 24, 2016

5. The files of the Consolidated Derivative Action will be maintained in one file under Lead Case No. 3:16-cv-06136-JST.

6. Co-Lead Counsel for plaintiffs for the conduct of *In re Twitter, Inc. Shareholder Derivative Litigation*, Lead Case No. 3:16-cv-06136-JST, is designated as follows:

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7. Plaintiffs' Co-Lead Counsel have the sole authority to speak for plaintiffs in matters regarding pre-trial procedure, trial, and settlement negotiations and shall make all work

1 assignments in such manner as to facilitate the orderly and efficient prosecution of this litigation
2 and to avoid duplicative or unproductive effort.

3 8. Plaintiffs' Co-Lead Counsel will be responsible for coordinating all activities and
4 appearances on behalf of plaintiffs and for the dissemination of notices and orders of this Court.
5 The parties further agree that no motion, request for discovery, or other pre-trial or trial
6 proceedings will be initiated or filed by any plaintiffs except through plaintiffs' Co-Lead Counsel.

7 9. Defendants' counsel may rely upon all agreements made with any of plaintiffs'
8 Co-Lead Counsel, or other duly authorized representative of plaintiffs' Co-Lead Counsel, and
9 such agreements will be binding on plaintiffs.

10 10. This Order shall apply to each purported derivative action arising out of the same
11 or substantially the same transactions or events as the Related Derivative Actions that is
12 subsequently filed in, removed to, or transferred to this Court.

13 11. If a case that properly belongs as part of *In re Twitter, Inc. Shareholder Derivative*
14 *Litigation*, Lead Case No. 3:16-cv-06136-JST, is hereafter filed in this Court or transferred here
15 from another court, counsel shall promptly call to the attention of the Clerk of the Court the filing
16 or transfer of any case that might properly be consolidated as part of *In re Twitter, Inc.*
17 *Shareholder Derivative Litigation*, Lead Case No. 3:16-cv-06136-JST.

18 12. In the interest of efficiency and avoidance of unnecessary duplication of effort or
19 judicial resources by the Court or the parties, it is further Ordered that within thirty (30) days of
20 the entry of an order consolidating the Related Derivative Actions, plaintiffs' Co-Lead Counsel
21 and counsel for Defendants shall meet and confer regarding further proceedings in the
22 Consolidated Derivative Action and shall submit a stipulation and proposed order regarding
23 further proceedings with the Court or, in the event counsel for the parties are unable to agree on a
24 proposed schedule for the conduct of further proceedings, plaintiffs' Co-Lead Counsel and
25 counsel for the Defendants shall submit a joint status report setting forth their respective views
26 regarding further proceedings in the Consolidated Derivative Action.

13. Pursuant to Fed. R. Civ. P. 5(b)(2)(E), all parties consent to service by e-mail of any document required to be served in the Consolidated Derivative Action.

IT IS SO STIPULATED.

Dated: November 30, 2016

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*Attorneys for Plaintiff Jim Porter and
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Dated: November 30, 2016

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[Proposed] Co-Lead Counsel for Plaintiffs*

Dated: November 30, 2016

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Attorneys for Plaintiff Francis Fleming

Dated: November 30, 2016

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*Attorney for Defendants Richard Costolo,
Anthony Noto, Jack Dorsey, Peter Fenton,
David Rosenblatt, Marjorie Scardino, Evan
Williams, Peter Chernin, Peter Currie, and
Nominal Defendant Twitter, Inc.*

SIGNATURE ATTESTATION

I am the ECF user whose identification and password are being used to file the foregoing *Stipulation and [Proposed] Order Consolidating Derivative Actions and Appointing Co-Lead Counsel for Plaintiffs*. In compliance with Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained.

Dated: November 30, 2016

/s/ Shane P. Sanders
SHANE P. SANDERS

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2016

HONORABLE JON S. TIGAR
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2016, a copy of the foregoing *Stipulation and [Proposed] Order Consolidating Derivative Actions and Appointing Co-Lead Counsel for Plaintiffs* was electronically filed with the Clerk of Court in the following actions:

Porter v. Costolo, et al., Case No. 3:16-cv-06136-JST

Espinoza v. Dorsey, et al., Case No. 3:16-cv-06457-WHO

Fleming v. Costolo, et al., Case No. 4:16-cv-06492-YGR

Notice of this filing will be sent via e-mail to all parties, in all actions, by operation of the Court's electronic filing system or by U.S. Mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

/s/ Shane P. Sanders
SHANE P. SANDERS